IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JAIPUR BENCH JAIPUR

O R D E R

UNION OF INDIA VERSUS MOHD. HANIF & ORS.

DB CIVIL WRIT PETITION NO.4042/2001
UNDER ARTICLES 226 & 227 OF THE
CONSTITUTION OF INDIA.

DATE OF ORDER :::: APRIL, 2007

PRESENT

HON'BLE JUSTICE MRS.GYAN SUDHA MISRA
HON'BLE MR.JUSTICE N.K.JAIN

Mr. Manish Bhandari, for the petitioner.
Mr. SC Sethi,)
Ms. Manju Sharma)for the respondent.

REPORTABLE

BY THE COURT (PER HON'BLE G.S.MISRA,J):

This writ petition has been filed by the Union of India through the General Manager, Western Railway and the Additional Divisional Railway Manager, Western Railway, Kota against the order passed by the Central Administrative Tribunal (for short “the Tribunal”), Jaipur Bench, Jaipur on 22.12.2000 by which the order of punishment of removal from service passed against the respondent-applicant Mohammed Hanif has been set aside holding it as illegal, unjust and against the principle of natural justice.

The facts of the case in so far as it is relevant

for the purpose of disposal of this writ petition is that the respondent-applicant-Mohammed Hanif while working on the post of driver in the Western Railway was charge sheeted for violation of Rule 2.06 of G & S Rules, 1981, Rule 3 (1) (2) of the Railway Service (Conduct) Rules, 1966 and Para 1007 (5) (6) and (7) of Operating Manual Western Railway alleging disobedience of rules and orders for which an enquiry was conducted and pursuant to the enquiry an order imposing punishment of removal from service was passed against the respondent. The principal charge against the petitioner disclosed that while he was posted as a driver for Goods Train (Mal Gadi Chalak) on 27.7.97 at Kota Division, a call was issued to him to drive a Train bearing No.2627 Karnataka Express for which the arrival time was 18.10 but he refused to respond to the call andinformed that some other driver be arranged for driving the train. Thereafter another driver was engaged for running the train but as he was unfamiliar with the route, the train caused an accident at Faridabad. As per the charge sheet, the respondent was the only train driver with two years experience to drive diesel engines who was driving goods train from Ganganagar to Tuglakabad Division and was aware of the route. In emergency situation as per the instruction

of the Railway Board Headquarter, the petitioner with permission of the competent authority was competent to drive Mail/Express Train which he refused. As per his driving skill he was having a B-Gradation Card for driving Mail and Express Trains, but had refused to drive the Express Train on 27.7.97 which met with an accident on account of respondent's refusal to drive. Thus, he was alleged of the charge of disobedience to the rules and orders in this regard as refusal to drive the train was a serious misconduct.

The respondent-applicant denied the charges, but the enquiry officer who conducted the enquiry recorded a finding that he was guilty of misconduct by disobeying the orders of his superior by refusing to drive the train on the relevant date on 27.7.97. Consequently, an order of punishment for removal from service was passed against him which he challenged before the Tribunal by preferring an appeal.

The learned Members of the Tribunal were pleased to set aside the order of removal from service passed against the respondent not on account of mis- appreciation of evidence recorded by the enquiry officer, but on the ground that there had been a gross violation of the

principle of natural justice while conducting the enquiry in as much as the respondent had not been granted proper opportunity to submit his defence and without giving such opportunity, the enquiry officer was appointed. Learned Members of the Tribunal also held that copies of the documents/statements as demanded by the applicant were not supplied to him to enable him to prepare his defence and the list of witnesses although was given in the charge sheet, no witness was examined by the Department in support of the charges. Besides this, the enquiry officer himself abruptly examined the applicant and there was no Presenting Officer of the Department to examine the departmental witness, the applicant and his defence witnesses. It was therefore, held that the enquiry officer had acted as a prosecutor in this case. It further noted that the statement of one Shri Ashok Kumar was recorded behind the back of the applicant, but no opportunity to cross examine this witness was provided to the respondent. The process of conducting the enquiry was therefore, considered unjust and illegal hence the punishment of removal from service imposed by the authorities was set aside and the respondent was ordered to be reinstated in service with full back wages from the date of removal to the

date of his reinstatement.

Challenging the impugned order of the Tribunal, it was submitted by the counsel for the appellant-Union of India that the respondent had admitted the charge to the extent that he committed a mistake by not accepting the call for driving the Express (Passenger) Train and hence, nothing more was required to be examined by the enquiry officer and the Tribunal erred in interfering with the order of punishment of removal of the respondent from service by directing for his reinstatement with full back wages ignoring that it was not justified considering the gravity of the charge.

The impugned order of the Tribunal was thereafter challenged by the appellant-Union of India by filing this writ petition which was admitted on 18.9.2001 and it was further ordered that the operation of the impugned order dated 20.12.2000 passed by the Tribunal shall remain stayed. The matter thereafter was finally heard by us wherein the counsel for the appellant-Union of India contended that the respondent had admitted the charge to the extent that he committed a mistake by not accepting the call for driving Express (passenger) Train and nothing more was required thereafter to be examined by the enquiry officer and

therefore the Tribunal erred in interfering with the order of punishment of removal of the respondent from service by directing for his reinstatement with full back wages ignoring the fact that it was not justified considering the gravity of the charge which was admitted by the delinquent-employee himself.

In course of hearing of this matter it finally transpired that the respondent had already superannuated on 31.5.2001 during pendency of this writ petition and therefore, the question of his reinstatement does not arise at all. Hence, it was considered inessential to enter into the question as to whether the respondent was granted opportunity by the Enquiry Officer to defend himself which could impress upon this Court to set aside the enquiry report on the ground of violation of principle of natural justice.

The question however still cropped up that if the order of the Tribunal directing for reinstatement of the respondent is allowed to remain, the respondent even after his superannuation would claim back wages for the period during which he did not discharge any duty and would be further entitled to pensionery benefits.

It was therefore essential to consider whether the order of removal of the respondent which was set aside by the Tribunal was justified or not. In the light of this background when we considered the submission of the counsel for the appellant-Union of India we found substance in the contention of the Union of India that once the respondent admitted the charge to the extent that he had refused to abide by the instruction of the superior officers and refused to drive the Express (Passenger) Train inspite of the emergent situation which stands proved by his statement and his cross examination, he obviously was guilty of the charge of gross dereliction of duty and the finding of the Tribunal that the enquiry suffered from legal infirmity of denial of natural justice to the respondent cannot be upheld as correct. If the respondent had not accepted the charge that he had disobeyed the orders of his superior officers, perhaps it would have been open for him to contend that he should have been granted proper opportunity to offer his defence; but once he admitted the charge of disobedience in his statement and cross examination obviously there was no reason to summon the witnesses against the charge that he had violated the orders of the higher authorities by denying

the instruction to drive the train.

Thus, we are of the view that the Tribunal's interference with the order of removal of the respondent from service was not legally justified as the finding neither suffered from legal infirmity nor it could be reasonably held that the respondent was denied the opportunity of hearing to prove his defence, in the wake of the admission of the respondent to the extent that he infact disobeyed the orders of his superiors by not driving the train. We therefore, set aside the order of the Tribunal by which the order for reinstatement has been passed in favour of the respondent-employee.

As a consequence of the order of removal from service, the respondent is bound to be affected seriously as he would be denied all the benefits to which he would have been otherwise entitled in case he retired in the normal course and this compels us to consider whether it would be appropriate or disproportionate to the charge levelled against the delinquent. The respondent has already attained the age of superannuation and could not have been reinstated in service in view of the order of stay passed

against him. But considering the fact that he has served in the Railway as a driver for long number of years during which there was no cause for complaint, we deem it just and appropriate to order for conversion of the order of removal of service into one of compulsory retirement so as to ensure him retiral benefits as was the view taken by the Supreme Court in the matter of Hussaini v. The High Court of Judicature at Allahabad & ors. Reported in AIR 1985 SC, 75. In this matter a sweeper in the High Court was placed under suspension for certain charges and thereafter had been dismissed from service. At the time of dismissal he had rendered service for over 20 years and therefore, the Apex Court while considering the fact that he was a low paid Safai-Jamadar, considered fit that although maximum punishment of dismissal from service was justified, retiral benefits were ordered be paid to him taking a lenient view in the matter of punishment awarded to the delinquent employee. This was done to keep the employee away from suffering penury and destitution during the post dismissal life who was a low paid employee. Hence, the order of punishment of dismissal was converted into one of compulsory retirement so that while denying service to the employee he could be ensured retiral benefits.

In the case at hand, we find that the case of respondent is somewhat similar to the case referred to hereinbefore for although we are of the view that a railway driver who refused to drive the train inspite of the emergency situation which led to another accident at Faridabad, deserves maximum penalty of the order of removal from service, we are also of the view that considering the long years of service which he had rendered in the railway during which he had discharged his duties diligently, he should not be denied atleast the pensionery benefits as he has already suffered punishment by losing several years of active service which he would have otherwise enjoyed if he had been reinstated soon after passing of the order of reinstatement by the Tribunal. Thus, while we confirm the findings of the enquiry officer regarding dereliction of duty on the part of the respondent-driver and also concur with the view that it justified maximum penalty, we deem it just and appropriate to convert the order of removal of his service into one of compulsory retirement in order to ensure him retiral benefits which
shall be computed on the basis of the years of service rendered by him in the Western Railway, Kota Division Kota. The pension shall be paid to the respondent on the basis of

length of service rendered by him from the date of his appointment to the date of his removal and shall be held payable from 1st May, 2007 i.e. after passing of the order by this Court. The pensionery benefits cannot be held payable prior to this date, as an order of stay had been operating in favour of the appellant-Union of India all these years and against the order of his reinstatement and back wages. Hence, in our view the pensionery benefits should be held payable only after decision of this writ petition.

Thus, we set aside the order of the Tribunal in so far as reinstatement of the respondent-employee with back wages is concerned as we have converted the order of removal into one of compulsory retirement granting him pensionery benefit.

The writ petition filed by the appellant-Union of India thus is partly allowed, but there shall be no order as to costs.

(N.K.JAIN) J (GYAN SUDHA MISRA) J

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